IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGNAL SIDE JURISDICTION

Arbitration Application No.9 of 2007

M/s Shriram Construction
through Partner Mr Suresh R Pensulwar
having its office at Padma Nagar
Behind Usha Nagar office
District Latur 413512 .. Applicant

vs

1. Union of India
   through General Manager
   Central Railway
   CST Mumbai 1
2. Chief Engineer (Constn)/Survey
   Central Railway, CST .. Respondents

Mr V.R Hukmani for the applicants.
Mr T.J. Pandian for respondents

CORAM: SWATANTER KUMAR,C.J.

Judgment reserved on 29.6.2007.
Judgment pronounced on .7.2007

JUDGMENT:-

The applicant is a contractor and carries on various works on behalf of the respondent railways. Respondent No.1 Union of India invited tenders for the earth work in embankment and cutting and bridge approaches from Ch 1040 to Ch 38377 in Section from Kurduwadi Barsi in connection with Gauge Conversion Project of Latur-Miraj Section from NG to BG and the tender of the applicant was accepted to the tune of

Rs.5,39,894.27. The completion period of the work was 18 months commencing from the date of letter of acceptance. The letter of acceptance and the application also contain clauses 63 and 64 of the general conditions of the contract which were applicable between the parties. Certain disputes arose between the parties, as according to the applicant, the respondents have failed to discharge their obligation in terms of the agreement and even the general conditions. The applicant was unable to commence the work at site without cross section sheets which were to be supplied by the respondents and in order to cover up their default in supplying of the cross section sheets, directed the applicant to carry out the work as per the oral directions at site. The applicant mobilised their adequate resources at site by importing machinery from other States which were rendered idle due to the non-use of the said cross section sheets. Therefore the applicant was left with no other alternative but to mitigate their financial loss on the said mobilised resources. Even the complete possession of the land was not given. Vide letter dated 11th November 2005 the applicant raised various grievances but of no consequence. Even the royalty amount payable to the applicant was deducted wrongfully.

2. In view of the various disputes, the applicant, through their advocate's letter dated 9th October 2006 placed the correct facts on record and called upon the General Manager, Central Railway and Chief Engineer (Construction) /Survey, Central Railway to appoint arbitrator or to take action in the matter. The respondents failed to appoint arbitrator or take such action as was permissible in law, which resulted in filing of the present application under section 11 of the Arbitration and Conciliation Act,1996(the Act).

3. In the reply filed by the respondents, reliance has been placed on the conditions in the contract between the parties as also the clauses relating to the settlement of disputes. It is stated therein that in terms of clauses 63 and 64 the claim will be restricted to 20% of the contract value and the general conditions would be applicable only for settlement of claims or dispute between the parties for value less than or equal to 20% of the value of the contract and when claims of disputes are worth more than 20% of the value of contract, the provisions of clauses 63 and 64 and other relevant clauses of the General Conditions of Contract will not be applicable and arbitration will not be a remedy for settlement of such disputes. In view of the reply, filed the applicant do not

dispute that such clauses exist in the contract between the parties and furthermore clauses 63 and 64 are controlled by the restrictions aforesaid noticed. The learned counsel for the applicant submits that the respondents be directed to consider the case of the applicant on the basis of their minimum 20% claim of the contract value and for the remaining claim they would take action in accordance with law and if any remedy is available to them. To this the learned counsel for the respondents has no objection.

3. In the aforesaid facts, it is appropriate that the claimants are given liberty to file proper claim not exceeding 20% of the contract value with the General Manager, Central Railway, CST within a period of two weeks from today and upon receipt of the request for reference for arbitration in terms of clauses 63 and 64, the respondents shall act in accordance with the arbitration clause and constitute an arbitral tribunal in terms thereof. The period taken during the pendency of this application would not be construed against the applicant.

4. All questions on merits are left open to the decision of the Arbitrator including arbitrability of the claim. Liberty to the

respondents to file their counter claim, if any,before the Arbitrator.

This application is accordingly disposed of.

CHIEF JUSTICE